



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

#### **SPECIAL ORDER BY CONSENT**

#### **ISSUED TO**

#### **HERITAGE LAND INVESTMENTS, LLC NO PERMIT**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d) between the State Water Control Board and Heritage Land Investments, LLC for the purpose of resolving certain alleged violations of environmental laws and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

5. "Order" means this document, also known as a Consent Special Order.
6. "HLI" or "Company" means Heritage Land Investments, LLC a Virginia limited liability company in good standing which owns and is developing property known as the Valleyburg Road Property near Luray, Page County, Virginia.
7. "Site" means the Valleyburg Road Property.
8. "ACOE" means the United States Army Corps of Engineers, Norfolk District, Western Virginia Regulatory Section.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. HLI owns the Site, a 70 acre parcel of land on which it is developing for 7 farmets.
2. On February 22, 2007, DEQ received a complaint regarding potential unauthorized environmental impacts to State waters.
3. On February 22, 2007, DEQ staff conducted an inspection of the Site which documented potential unauthorized environmental impacts to State waters from the construction of two ponds (0.26 acres and 0.36 acres) within State waters. The ponds appeared to have been constructed in such a fashion to interrupt the flow of an intermittent stream and springs in the area.
4. On March 27, 2007, DEQ issued Warning Letter WL-07-03-VRO-002 for unauthorized environmental impacts to State waters.
5. On April 6, 2007, DEQ staff met with Mr. Kevin Moyer, general manager of HLI, on-site to discuss resolving the issue. During this on-site meeting, DEQ informed Mr. Moyer that the Site should be evaluated to determine the full extent of the environmental impacts.
6. DEQ issued NOV No. 07-05-VRO-003 on May 21, 2007, for conducting in-stream construction of two ponds on an intermittent stream section without a permit in violation of VA Code 62.1-44.15:5 and 9 VAC 25-210-50 which prohibit such actions without a permit.
7. On June 15, 2007, DEQ met with Mr. Kevin Moyer, general manager of HLI, in an informal conference to discuss the violations cited in the NOV. Mr. Moyer attributed the violations to misunderstandings, by both its consultants and County officials, regarding whether a stream existed on the Site which would require permits to construct the ponds. Mr. Moyer asserted that he was led to believe after consulting with county permitting officials that no further permits were needed for the

construction of the ponds at the Site. DEQ suggested that Mr. Moyer evaluate the environmental impacts at the Site and submit that information for DEQ's review.

8. On October 4, 2007, DEQ received a report titled "Site Evaluation Report". Based on the information therein, and on site visits conducted by DEQ staff, DEQ concluded that the apparent environmental impacts to State waters were minor. While the Site project would also have required a General Permit through DEQ, this General Permit would have required reporting only with no compensation or mitigation for the environmental impacts. Based on the nature of the work conducted at the site, the ACOE issued an after the fact permit for the Valleyburg Road property project.

#### SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders HLI, and HLI agrees, to perform the actions described in this Order.
2. Within 30 days of the effective date of this Order, HLI shall pay a civil charge of **\$2600** in settlement of the alleged violations cited in this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

HLI shall also include its federal identification number (FIN) with the check, certified check, money order, or cashier's check.

#### SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Heritage Land Investments, LLC, for good cause shown by HLI, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those alleged violations specifically identified herein in Section C. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, HLI admits the jurisdictional allegations, factual findings, and conclusions of law

contained herein.

4. HLI consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. HLI declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by HLI to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. HLI shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. HLI shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. HLI shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

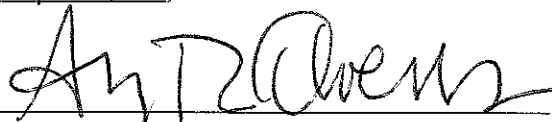
Failure to so notify the Director of the Valley Regional Office within 24 hours of learning of any condition above, which HLI intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and HLI. Notwithstanding the foregoing, HLI agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. HLI petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
  - b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to HLI.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve HLI from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. The undersigned representative of HLI certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind HLI to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of HLI.
13. By its signature below, the HLI, voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Apr 24<sup>th</sup>, 2008.

  
\_\_\_\_\_  
Amy T. Owens, Regional Director  
Department of Environmental Quality

DRAFT

Heritage Land Investments, LLC voluntarily agrees to the issuance of this Order.

By: Kevin Mayer

Title: President

Date: 2-7-08

Commonwealth of Virginia

City/County of Page

The foregoing document was signed and acknowledged before me this

7<sup>th</sup> day of February, 2008, by Kevin Mayer  
(name)

who is President of Heritage Land Investments, LLC on behalf of the Company.

(title)

April Knight  
Notary Public

My commission expires: 4/30/11

